

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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TRANS-SPEC TRUCK SERVICE, INC. )  
d/b/a TRUCK SERVICE, )  
                                )  
                                Plaintiff )  
                                )  
vs.                             )                                      CIVIL ACTION NO. 04-11836-RCL  
                                )  
                                )  
CATERPILLAR INC. )  
                               )  
                               Defendant )  
                               )  
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CATERPILLAR INC.'S RESPONSE TO MOTION TO CHANGE HEARING DATE

The defendant Caterpillar Inc. does not object to changing the date for hearing on the several pending motions from May 4 to any time on May 3.

Caterpillar objects, however, to changing the hearing date to one later in May. This is because Caterpillar's counsel will be out of the country on vacation beginning May 5 and, later in the month, expects to be out of state taking and defending depositions in a multimillion dollar fraud case pending in the United States District Court for the District of South Carolina that has a firm June 2 discovery deadline. In practical terms Caterpillar's counsel will therefore not be able to prepare adequately for and attend this very important hearing if it is rescheduled for a date in May after the 4th.

Caterpillar is happy to accommodate Trans-Spec's counsel if Trans-Spec's counsel have a scheduling conflict on May 4, but it would be unfair and unjust to accommodate their conflict by rescheduling the hearing to a date that is not feasible for Caterpillar's counsel. This is why Caterpillar did not assent wholesale to Trans-Spec's motion. Trans-Spec's counsel's Local Rule 7.1 Certificate of Consultation is misleading insofar as it might be intended to suggest that

Caterpillar's counsel's gave him a response indicating disregard for the Court's convenience rather than a response indicating Caterpillar's counsel's unavailability later in the month of May.<sup>1</sup>

CATERPILLAR INC.,

By its attorneys,

CAMPBELL CAMPBELL EDWARDS  
& CONROY, P.C.

John A.K. Gruhert (BBO: 213820)  
One Constitution Plaza  
Boston, MA 02129  
(617) 241-3000

CERTIFICATE OF SERVICE

I, John A.K. Grunert, hereby certify that on April 14, 2006, I served the within response by causing it to be transmitted electronically to Christian Samito, Esquire, Donovan Hatem LLP, Two Seaport Lane, Boston, MA 02210.

John A.K. Grunert

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<sup>1</sup> Trans-Spec's counsel's statement in his Local Rule 7.1 Certificate of Consultation that he "conferred" with Caterpillar's counsel is false. No conference occurred. Mr. Samito sent an e-mail, received a prompt reply reporting Caterpillar's counsel's unavailability after May 4 and suggesting that he might perhaps reword his motion to accommodate that problem, but then filed his motion without speaking to Caterpillar's counsel or addressing the concern Caterpillar's counsel had expressed.